

AMENDED IN ASSEMBLY MARCH 28, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2323**

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**Introduced by Assembly Member Huff**

February 21, 2008

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An act to amend Sections 17209 and 17331 of the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2323, as amended, Huff. Escrow agents.

Existing law, the Escrow Law, provides for licensing and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation (Fidelity Corporation), which is established as a nonprofit corporation to indemnify its members against loss, and which is funded by fees and assessments on its members. Existing law requires an applicant for a license as an escrow agent or for a certificate of Fidelity Corporation to submit fingerprints for a Department of Justice criminal background check.

This bill would expand these provisions to also include federal summary criminal history information from the Federal Bureau of Investigation and other related matters. The bill would require the Department of Justice to forward the commissioner's or Fidelity Corporation's request to the Federal Bureau of Investigation and to compile and disseminate a response to the requesting party. The bill would require the Department of Justice to charge a fee for these services sufficient to cover its related costs, ~~and would require applicants for a~~

~~license or certificate to pay specified fees to the commissioner or to Fidelity Corporation, as applicable.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17209 of the Financial Code is amended  
2 to read:  
3     17209. An application for a license as an escrow agent shall  
4 be signed and verified by an authorized officer of the applicant,  
5 and such application shall be accompanied by a certified copy of  
6 the articles of incorporation and a copy of the bylaws of the  
7 proposed licensee. The application shall set forth:  
8     (a) The names and addresses of the incorporators, directors, and  
9 officers.  
10    (b) An itemized statement of the estimated receipts and  
11 expenditures of the proposed first year of operations.  
12    (c) An audited financial statement showing compliance with  
13 Section 17210.  
14    (d) The name and address of the person, or persons, meeting  
15 the requirements of Section 17200.8, and a statement supporting  
16 such persons' qualifications.  
17    (e) The type of business for which the license is requested.  
18    (f) Any other matters the commissioner may require.  
19    (g) An application for a license as an escrow agent filed with  
20 the commissioner shall also include a completed statement of  
21 identity and questionnaire, as prescribed by the commissioner, for  
22 all stockholders, directors, officers, trustees, managers, and other  
23 persons participating in the escrow business directly or indirectly  
24 compensated by the escrow agent (other than usual and customary  
25 employees who file pursuant to subdivision (d) of Section 17414.1  
26 and Section 17419) and shall also include fingerprints and related  
27 information for those persons pursuant to subdivision (h) ~~and the~~  
28 ~~fee required pursuant to paragraph (5) of subdivision (h).~~ The  
29 commissioner shall notify the applicant in writing if any of the  
30 information received pursuant to this division shows that a person's  
31 employment, participation, or ownership interest would be in  
32 violation of Section 17414.1, and the escrow agent shall deny the  
33 person the employment or interest. If the application is not

1 satisfactorily amended to remove the deficiency within six months  
2 of the first notice of deficiency, the application shall be summarily  
3 denied. Persons required to file the employment application  
4 pursuant to Section 17419 are not required to file the statement of  
5 identity and questionnaire described in this section.

6 (h) (1) The fingerprint images and related information shall be  
7 submitted by the commissioner to the Department of Justice, on  
8 forms established by that department, for the purposes of obtaining  
9 information as to the existence and content of a record of state or  
10 federal corrections, state or federal arrests, and information as to  
11 the existence of and content of a record of state or federal arrests  
12 for which the Department of Justice establishes that the person is  
13 free on bail or on his or her own recognizance pending trial or  
14 appeal.

15 (2) Upon receipt, the Department of Justice shall forward to the  
16 Federal Bureau of Investigation requests for federal summary  
17 criminal history information received from the commissioner  
18 pursuant to this section. The Department of Justice shall review  
19 the information returned from the Federal Bureau of Investigation  
20 and compile and disseminate a response to the commissioner  
21 pursuant to paragraph (1) of subdivision (p) of Section 11105 of  
22 the Penal Code.

23 (3) The commissioner shall request from the Department of  
24 Justice subsequent arrest notification service as provided pursuant  
25 to Section 11105.2 of the Penal Code.

26 (4) The Department of Justice shall charge a fee sufficient to  
27 cover the costs of processing the requests pursuant to this  
28 subdivision.

29 ~~(5) At the time of the filing of the application, the applicant~~  
30 ~~shall pay the commissioner the sum of one hundred dollars (\$100)~~  
31 ~~as a fee for investigating the application, plus an additional amount~~  
32 ~~to cover the cost of fingerprint processing and the criminal history~~  
33 ~~record check under this subdivision, as determined by the~~  
34 ~~commissioner. The investigation fee, including the amount for the~~  
35 ~~criminal history check, and the application fee are not refundable~~  
36 ~~if an application is denied or withdrawn.~~

37 SEC. 2. Section 17331 of the Financial Code is amended to  
38 read:

39 17331. (a) An applicant applying for licensure as an escrow  
40 agent under this division is required to apply for a Fidelity

1 Corporation Certificate, prepared and issued by Fidelity  
2 Corporation, for each proposed shareholder, officer, director,  
3 trustee, manager, or employee who is to be directly or indirectly  
4 compensated by the escrow agent, prior to licensure of the escrow  
5 agent by the commissioner.

6 (b) A shareholder, officer, director, trustee, manager, or  
7 employee of an escrow agent, directly or indirectly compensated  
8 by an escrow agent within this state, is required to complete and  
9 execute a Fidelity Corporation Certificate application, prepared  
10 and issued by Fidelity Corporation, as a condition of his or her  
11 employment or entitlement to compensation, before the person  
12 may continue the regular discharge of his or her duties, or have  
13 access to moneys or negotiable securities belonging to or in the  
14 possession of the escrow agent, or draw checks upon the escrow  
15 agent or the trust funds of the escrow agent.

16 (c) Fidelity Corporation Certificates may also be known as  
17 Escrow Agent's Fidelity Corporation Certificates or EAFC  
18 Certificates. The certificate at all times remains the property of  
19 Fidelity Corporation, and is not transferable by either a member  
20 or employee. The certificate is not a warranty or guarantee by  
21 Fidelity Corporation of the integrity, veracity, or competence of  
22 the person.

23 (d) An application for a Fidelity Corporation Certificate shall  
24 be in writing and in the form prescribed by Fidelity Corporation.  
25 The application may include (1) *a fee not to exceed fifty dollars*  
26 *(\$50)*, (2) two passport-size photographs, ~~(2) and~~ (3) a set of  
27 fingerprints *on the form established by the Department of Justice*  
28 *for requesting state summary criminal history information, plus*  
29 *the fee charged by the Department of Justice for processing*  
30 *noncriminal applicant fingerprints* and related information pursuant  
31 to subdivision (I), ~~and (3) the fee required pursuant to paragraph~~  
32 ~~(5) of subdivision (I).~~ The Department of Justice shall honor the  
33 Fidelity Corporation report request form and issue a report to  
34 Fidelity Corporation, notwithstanding any other provision of law  
35 or regulation to the contrary. Fidelity Corporation is also entitled  
36 to submit a set of fingerprints on the specified noncriminal  
37 applicant fingerprint form for the purpose of requesting and  
38 obtaining a report from the Department of Justice, for the officers  
39 and employees of Fidelity Corporation. A member shall cause the  
40 filing of applications for all existing employees as required by this

1 section within 30 days of written notice by Fidelity Corporation  
2 to the member.

3 (e) The application form shall include a provision for binding  
4 arbitration to allow for arbitration of any appeal or dispute as to a  
5 decision by Fidelity Corporation concerning the certificate, as  
6 follows:

7 A DISPUTE AS TO WHETHER THE DENIAL OF THIS  
8 CERTIFICATE APPLICATION OR ANY SUBSEQUENT  
9 SUSPENSION OR REVOCATION OF THE CERTIFICATE IS  
10 UNNECESSARY OR UNAUTHORIZED OR WAS  
11 IMPROPERLY, NEGLIGENCE, OR UNLAWFULLY  
12 RENDERED, MAY BE DETERMINED BY SUBMISSION TO  
13 ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND  
14 NOT BY A LAWSUIT OR RESORT TO COURT PROCESS  
15 EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL  
16 REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT  
17 AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL  
18 CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT,  
19 SUBMIT ANY ISSUE ARISING FROM A DECISION BY  
20 FIDELITY CORPORATION TO DENY THIS CERTIFICATE  
21 APPLICATION OR TO SUSPEND OR REVOKE THE  
22 CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL  
23 ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO  
24 BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS  
25 NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS  
26 CERTIFICATE APPLICATION LITIGATED IN A COURT OR  
27 JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY  
28 AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN  
29 THE ESCROW LAW. ARBITRATION MAY BE COMPELLED  
30 AS PROVIDED BY LAW.

31 (f) There is no liability on the part of and no cause of action of  
32 any nature may arise against Fidelity Corporation or its members,  
33 directors, officers, employees, or agents, the State of California,  
34 the Department of Corporations, or any officer, agent, or employee  
35 of the state or the Department of Corporations for statements made  
36 by Fidelity Corporation in reports or recommendations made  
37 pursuant to this division, or for reports or recommendations made  
38 pursuant to this division to Fidelity Corporation by its members,  
39 directors, officers, employees or agents, the State of California,  
40 the Department of Corporations, or any officer, agent, or employee

1 of the state or the Department of Corporations, unless the  
2 information provided is false and the party making the statement  
3 or providing the false information does so with knowledge and  
4 malice. Reports or recommendations made pursuant to this section,  
5 or Section 17331.1, 17331.2, or 17331.3, are not public documents.

6 (g) There is no liability on the part of and no cause of action of  
7 any nature may arise against Fidelity Corporation or its members,  
8 directors, officers, employees, or agents, the State of California,  
9 the Department of Corporations, or an officer, agent, or employee  
10 of the state or the Department of Corporations for the release of  
11 any information furnished to Fidelity Corporation pursuant to this  
12 section unless the information released is false and the party,  
13 including Fidelity Corporation, its members, directors, officers,  
14 employees, or agents, the state, the Department of Corporations,  
15 or any officer, agent, or employee of the state or the Department  
16 of Corporations, who releases the false information does so with  
17 knowledge and malice.

18 (h) There is no liability on the part of and no cause of action of  
19 any nature may arise against Fidelity Corporation or its directors,  
20 officers, employees, or agents, for any decision to deny an  
21 application for a certificate or to suspend or revoke the certificate  
22 of any person or for the timing of any decision or the timing of  
23 any notice to persons or members thereof, or for any failure to  
24 deny an application under subdivision (a) of Section 17331.2. This  
25 subdivision does not apply to acts performed in bad faith or with  
26 malice.

27 (i) Fidelity Corporation, any member of Fidelity Corporation,  
28 an agent of Fidelity Corporation or of its members, or any person  
29 who uses any information obtained under this section for any  
30 purpose not authorized by this chapter is guilty of a misdemeanor.

31 (j) Section 17331, 17331.1, or 17331.2 does not constitute a  
32 restriction or limitation upon the obligation of Fidelity Corporation  
33 to indemnify members against loss, as provided in Sections 17310  
34 and 17314. The failure to obtain a certificate, the denial of an  
35 application for a certificate, or the suspension, cancellation, or  
36 revocation of a certificate does not limit the obligation of Fidelity  
37 Corporation to indemnify a member against loss.

38 (k) Notwithstanding Section 11105 of the Penal Code, Fidelity  
39 Corporation is entitled to receive state and federal summary  
40 criminal history information and subsequent arrest notification

1 from the Department of Justice as a result of fingerprint cards  
2 submitted to the Department of Justice by the Department of  
3 Corporations, pursuant to subdivision (g) of Section 17209, Section  
4 17212.1, and subdivision (d) of Section 17414.1, by or on behalf  
5 of escrow agents, shareholders, officers, directors, trustees,  
6 managers, or employees of an escrow agent, directly or indirectly  
7 compensated by an escrow agent. The Department of Justice and  
8 Fidelity Corporation shall enter into an agreement to implement  
9 this subdivision. The Department of Corporations shall forward  
10 to Fidelity Corporation, weekly, a list of names of individual  
11 fingerprints submitted to the Department of Justice.

12 (l) (1) The fingerprint images and related information required  
13 pursuant to subdivision (d) shall be submitted by the Department  
14 of Corporations to the Department of Justice, on forms established  
15 by that department, for the purposes of obtaining information as  
16 to the existence and content of a record of state or federal  
17 corrections, state or federal arrests, and information as to the  
18 existence of and content of a record of state or federal arrests for  
19 which the Department of Justice establishes that the person is free  
20 on bail or on his or her own recognizance pending trial or appeal.

21 (2) Upon receipt, the Department of Justice shall forward to the  
22 Federal Bureau of Investigation requests for federal summary  
23 criminal history information received pursuant to this section. The  
24 Department of Justice shall review the information returned from  
25 the Federal Bureau of Investigation and compile and disseminate  
26 a response to Fidelity Corporation pursuant to paragraph (1) of  
27 subdivision (p) of Section 11105 of the Penal Code.

28 (3) Fidelity Corporation shall request from the Department of  
29 Justice subsequent arrest notification service as provided pursuant  
30 to Section 11105.2 of the Penal Code.

31 (4) The Department of Justice shall charge a fee sufficient to  
32 cover the costs of processing the requests pursuant to this  
33 subdivision.

34 (5) At the time of the filing of the application, the applicant  
35 shall pay to Fidelity Corporation the sum of one hundred dollars  
36 (\$100) as a fee for investigating the application, plus an additional  
37 amount to cover the cost of fingerprint processing and the criminal  
38 history record check under this subdivision, as determined by the  
39 commissioner. The investigation fee, including the amount for the

- 1 criminal history check, and the application fee are not refundable
- 2 if an application is denied or withdrawn.

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